

HELLER, EHRMAN, WHITE & MCAULIFFE

ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

333 BUSH STREET  
SAN FRANCISCO, CALIFORNIA 94104-2878  
FACSIMILE (415) 772-6268  
TELEPHONE (415) 772-6000

6100 COLUMBIA CENTER · 701 FIFTH AVENUE  
SEATTLE, WASHINGTON 98104-7098

TELEPHONE (206) 447-0900 · FACSIMILE (206) 447-0849

550 WEST 7TH AVENUE  
ANCHORAGE, ALASKA 99501-3571  
FACSIMILE (907) 277-1920  
TELEPHONE (907) 277-1900

525 UNIVERSITY AVENUE  
PALO ALTO, CALIFORNIA 94301-1908  
FACSIMILE (415) 324-0838  
TELEPHONE (415) 326-7800

1300 S.W. FIFTH AVENUE  
PORTLAND, OREGON 97201-5696  
FACSIMILE (503) 241-0950  
TELEPHONE (503) 227-7400

601 SOUTH FIGUEROA STREET  
LOS ANGELES, CALIFORNIA 90017-5758  
FACSIMILE (213) 614-1868  
TELEPHONE (213) 689-0200

January 29, 1992

1201 PACIFIC AVENUE  
TACOMA, WASHINGTON 98402-4308  
FACSIMILE (206) 572-6743  
TELEPHONE (206) 572-6666

RALPH H. PALUMBO  
PARTNER

RECEIVED

FEB 3 - 1992

VIA HAND DELIVERY

Environmental Affairs Division

James A. Tupper  
Assistant City Attorney  
City of Seattle  
Law Department  
1111 Third Avenue, Suite 2640  
Seattle, WA 98101

Re: Evergreen Marine Leasing Indemnity and Release

Dear Mr. Tupper:

This letter responds to your last letter by which you requested additional information regarding contamination of Slip 4 and adjacent upland property caused by releases of hazardous substances from the Georgetown Flume, the Slip 4 CSO/storm drain and the other storm drains.

A. Slip 4 Data

We previously provided a map that shows PCB concentration levels at Slip 4 and test stations located in the Georgetown Flume, the Slip 4 CSO/storm drain and other storm drains which discharge into Slip 4. Attached hereto are a copy of the map we previously provided (Exhibit A-1), Landau Associates Figure 9.1 (which shows sediment sampling locations in Slip 4) (Exhibit A-2), and laboratory certificates of analysis from Landau's 1990 sediment investigations of Slip 4 (Exhibit A-3). The Landau sampling and labelling scheme is as follows:

- Identification numbers SL4-1, SL4-2, etc., denote Slip 4 sediments collected at stations 1, 2, etc., using a modified Van Veen sampler. Typically the upper

SCL 05973

CTY0050876

SEA291333

fifteen centimeters of sediments were composited for analysis.

- Identification numbers 1A-2-4, 1A-5-6, 2A-2-3.75, etc., denote Slip 4 sediments collected from the following locations: Station 1 (2 to 4 feet below the sediment/water interface); Station 1 (5 to 6 feet); Station 2 (2 to 3.75 feet); etc. Samples were collected from sediment cores.

During recent months, Evergreen Marine Leasing's ("EML") environmental consultant, Hart Crowser, has collected sediment and/or water samples from the major drains which discharge to the head of Slip 4. The sampling locations included the I-5 storm drain, the Georgetown Flume, the Slip 4 CSO/SD, and the Slip 4 Storm Drain, as depicted on the map (Exhibit A-1). Hart Crowser's effort included a preliminary sampling of sediments within the drainage lines, which was conducted on October 29, 1991.<sup>1</sup> Following receipt of preliminary sediment sampling results, Hart Crowser initiated storm water sampling. Water samples were collected on November 19 and December 5, 1991. Due to variability in storm water flow patterns and tidal conditions permitting access to the drains, water could not be sampled from all sampling locations during a single given storm event.

Preliminary results of chemical determinations performed on these samples are summarized in Exhibit B attached hereto. Hart Crowser has not yet validated the data to verify the accuracy of the analytical results. Similarly, the results of additional analyses performed on sediment quality assurance samples are not summarized in Table 1. Nevertheless, we believe Hart Crowser's preliminary data indicates:

- Discharges from the Slip 4 CSO/SD represent an ongoing source of PCBs sufficient to result in marine sediment contamination concentrations in excess of state regulations;
- Discharges from the I-5 Storm Drain Slip 4 CSO/SD and Slip 4 Storm Drain outfalls represent an ongoing source of metals sufficient to result in marine sediment contamination, in excess of state regulations; and

---

<sup>1</sup>Hart Crowser requested access from the City of Seattle to sample sediments within the Georgetown Flume. Access was denied by the City.

SCL 05974

- Based on a comparison of the prior EPA sediment sampling data with Hart Crowser's preliminary results, current releases of metals, PCBs, and PAHs from the I-5 Storm Drain Slip 4 CSO/SD and the Slip 4 Storm Drain appear to be similar to conditions reported during 1985.

**B. Evidence of Contamination at Upland Property - Parcel D**

In my letter to you dated December 9, 1991 and at the initial meeting between EML and the City, we stated that the property adjoining Slip 4 had been contaminated by releases of hazardous substances for which the City is responsible. In about 1982, sediments containing hazardous substances released from the Georgetown Flume and the Slip 4 storm drains were dredged from Slip 4 and placed on adjoining upland property owned by EML (Parcel D). Attached as Exhibits C-1 and C-2 respectively are a copy of the building permit document and corresponding building permit plans which evidence dredging of material from Slip 4 and redisposal of the dredged material on Parcel D. Attached as Exhibit C-3 and C-4 respectively are an aerial photograph showing locations where fill removed from Slip 4 was placed on Parcel D, and Hart Crowser Figure 3 showing a plan view of the location where the dredged fill was placed.

Soil sampling and analysis performed by Landau Associates, in the southwesterly area where fill was placed detected PCB concentrations at levels slightly above Model Toxic Control Act Method A or B soil cleanup levels for soils. Soil samples have not been collected in the northeasterly dredge disposal area. Overall soil investigations are not yet sufficient to fully characterize the nature and scope of contamination on Parcel D which is attributable to hazardous substances released to Slip 4 from the Georgetown Flume and the storm drains.

Evergreen Marine Leasing is prepared to consider acceptance of liability with respect to the uplands Parcel D if the City indemnifies EML with respect to Slip 4 sediment contamination and the City agrees to pay some amount to EML for damages suffered to date, as outlined in my letter dated December 9, 1991. As I stated in my prior letter, EML will consider reimbursement of less than the full amount of its damages if the City promptly issues its indemnity on satisfactory terms to EML. We have previously provided a draft copy of the indemnity.

Please understand further that if the City does not promptly indemnify EML, EML will pursue its claims with respect to both Slip 4 and Parcel D, and it will seek to recover the full amount

SCL 05975

James A. Tupper  
January 29, 1992  
Page 4

of its damages, together with attorneys' fees and other costs, expenses and legal remedies.

C. Schedule

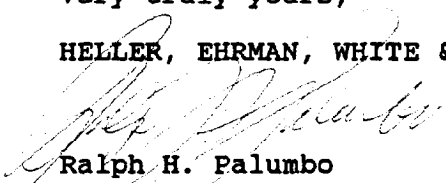
Because EML continues to suffer damages each day this matter remains unresolved, we need to know whether the City is seriously considering giving the indemnity we have requested. Accordingly, EML will refrain from pursuing other alternatives so long as the following schedule is met:

- The City confirms its willingness to commence negotiations with respect to the indemnity agreement and payment of damages by no later than January 31, 1992;
- Negotiations between the City and EML begin by no later than February 10, 1992;
- An agreement with respect to indemnification and the payment of damages is executed by EML and the City by no later than March 31, 1992.

We look forward to your prompt response. Please call me if you have any questions regarding the matters set forth in this letter.

Very truly yours,

HELLER, EHRMAN, WHITE & MCAULIFFE



Ralph H. Palumbo

cc: Ken Lauerman  
Mark Rossi

SCL 05976

James A. Tupper  
January 29, 1992  
Page 5

bcc: Clay Patmont

H:\RNP\FIRSTINT\TUPPER.LL

SCL 05977

---

CTY0050880

SEA291337